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In the Supreme Court of the United States

OCTOBER TERM, 1982

EASTSIDE MENTAL HEALTH CENTER, INC., PETITIONER

v.

DAVID R. WILLIAMS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the doctrine of intergovernmental immunity recognized in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), precludes application of the minimum wage and overtime provisions of the Fair Labor Standards Act to an employee of a non-profit corporation that contracts with state and local governmental bodies to provide mental health services.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-21a) is reported at 669 F.2d 671. The opinions of the district court (Pet. App. 22a-36a) are reported at 509 F. Supp. 579.

JURISDICTION

The judgment of the court of appeals was entered on March 5, 1982. A petition for rehearing was denied on May 13, 1982 (Pet. App. 1a). The petition for a writ of certiorari was filed on August 5, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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[1]The Secretary of Labor was granted intervention in the court of appeals pursuant to 28 U.S.C. 2403 and accordingly is a respondent in this Court.

STATEMENT

1. Petitioner is a non-profit corporation established under Ala. Code § 10-3-1 (repl. 1980) (Pet. App. 6a). Pursuant to contracts with the State of Alabama and local governmental bodies, petitioner provides various outpatient, emergency, and inpatient mental health services (*id.* at 8a). Petitioner has its own articles of incorporation, by-laws, and board of directors. The board manages the Center and hires and fires the Center's administrative staff (*id.* at 6a-7a).

Pursuant to petitioner's by-laws, some of the Center's directors are appointed by public or governmental entities and others by private non-profit entities (see Pet. App. 7a & n.4). It is undisputed that, though appointed by outside bodies, the directors do not sit as representatives of their appointing agencies and may not be removed by their appointing agencies (*id.* at 7a).

Before its establishment as a non-profit corporation in 1975, petitioner was part of the Jefferson-Blount-St. Clair Mental Health Authority, a public corporation established under Ala. Code § 22-1-1 (1975), which coordinates mental health care in a three-county region (Pet. App. 5a-6a). When the Authority, which disburses state funds to all medical health centers within its catchment area, faced conflict of interest charges from other community mental health centers within the region that compete with petitioner for funds, petitioner was reestablished as a separate entity at "arm's-length" from the Jefferson Authority (*id.* at 6a). Because state law or policy limited the number of Section 22-1-1 public corporations operating in a particular political subdivision, petitioner was established as a non-profit corporation rather than as a separate public corporation (*id.* at 7a).

Petitioner, like all mental health centers in Alabama, is subject to considerable state regulation. This oversight arises from petitioner's own articles of incorporation and by-laws, state standards applicable to all licensees, and contracts petitioner has entered with state agencies for the provision of services (Pet. App. 8a). For example, the Center must be state certified; its accounts are subject to audit by state (and federal) officials;[2] and changes in petitioner's articles of incorporation must be approved by the Alabama Health Board and the Authority. Pursuant to petitioner's by-laws the Authority reviews board member appointments and certain aspects of petitioner's budget (*ibid.*).

2. Between February 1977 and May 1979 respondent Williams was employed as the resident manager of a halfway house mental health services facility operated by petitioner. He thereafter instituted this suit for back pay under Section 16(b) of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 216(b), in the United States District Court for the Northern District of Alabama. The district court granted petitioner's motion for summary judgment (Pet. App. 30a-31a), reasoning that, under *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), petitioner is exempt from the FLSA's requirements because it "provides a traditional government function" (Pet. App. 35a). Upon Williams' motion for reconsideration, the district court reaffirmed its prior determination (*id.* at 22a). The district court concluded that petitioner is constitutionally immune from application of the FLSA irrespective of whether it constitutes a political subdivision of the State of Alabama, because the function it performs is an essentially governmental one, under criteria devised by the Sixth Circuit in *Amersbach* v. *City of Cleveland*, 598 F.2d 1033, 1037 (1979).

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[2] At the pertinent time petitioner received about 38% of its funds from the federal government (Pet. App. 8a).

Alternatively, the district court concluded that petitioner is a political subdivision of the State invested with intergovernmental immunity because "its administrators are responsible to public officials" (Pet. App. 26a).

The court of appeals reversed (Pet. App. 3a-21a). Applying this Court's decisions in *National League of Cities* v. *Usery, supra,* and *Hodel* v. *Virginia Surface Mining & Reclaimation Association,* 452 U.S. 264 (1981), the court of appeals stated that the "determinative fact in this case is simply that the entity with which we are dealing is not a state or a political subdivision of a state" (Pet. App. 15a). In concluding that petitioner does not share in the intergovernmental immunity of the State of Alabama, the court of appeals noted that petitioner is not an agency of the State, that unlike most community mental health centers in Alabama petitioner is, as a matter of state law, a private non-profit corporation, rather than a public corporation, and that petitioner's employees are not employees of the State or its agencies (*id.* at 15a-16a). Nor, in the court of appeals' view, did other controls exercised by the State of Alabama and its agencies and subdivisions convert petitioner into a state governmental entity (*id.* at 16a-17a).

The court of appeals observed that state regulation and licensing of community mental health centers is a normal incident of police power regulation of private entities in an area affected by public interest. The court regarded the participation of the Jefferson Authority and other agencies of the State and its subdivisions in the appointment of petitioner's directors as no more than a special kind of police power regulation, because the board's membership also included appointees of private entities, and because even the appointees of public agencies do not serve as

representatives of the appointing agencies and are not subject to dismissal by those agencies.[3] The court of appeals concluded (Pet. App. 16a):

> For purposes of the sovereignty issue before us, Eastside is * * * best characterized as a private, nonprofit corporation, licensed in the State of Alabama to perform the services of a community mental health center, and carrying out such services by means of ordinary contracts with various state and local agencies and institutions. It is thus analogous to a normal nonprofit institution in its basic corporate structure, while at the same time analogous to a private business doing contracting work for the state in its basic business operations.

Petitioner's nongovernmental status precluded participation in the State's intergovernmental immunity (*id.* at 15a):

> For whatever reason, Alabama did not elect to operate Eastside as a state institution with state employees; instead it set up a not for profit corporation with a separate independent board of directors to administer it. Whatever may have been the state's reason for doing it this way, it must live with the consequences. It cannot claim an immunity based on a condition which it itself sought to avoid.

Because petitioner was determined not to be an agency or political subdivision of the State, the court of appeals concluded that application of the FLSA to respondent Williams' employment would not constitute regulation of "States as States" (*Hodel* v. *Virginia Surface Mining &*

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[3]The court of appeals noted that although petitioner is accorded exemption from the state sales tax and its employees participate in the state retirement system, neither privilege is restricted, under state law, to governmental entities (Pet. App. 17a & n.9).

Reclamation Association, supra, 452 U.S. at 287, quoting *National League of Cities* v. *Usery, supra*, 426 U.S. at 854). This conclusion, the court explained (Pet. App. 18a), was "sufficient under the *Hodel* test for us to hold that [petitioner] may not be exempt from the FLSA," and made it unnecessary to "consider the extent of the FLSA's effect on Eastside's function of granting mental health services * * * [or to] decide whether such function is traditional or essential."[4]

ARGUMENT

In *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), this Court held that the "constitutional doctrine of intergovernmental immunity" (*id.* at 837) bars application of the minimum-wage and overtime provisions of the Fair Labor Standards Act to "the States *qua* States" (*id.* at 847), "insofar as [it] operate[s] to directly displace the State's freedom to structure integral operations in areas of traditional governmental functions" (*id.* at 852). In *Hodel* v. *Virginia Surface Mining & Reclamation Association, Inc.*, 452 U.S. 264, 287-288 (1981), the Court summarized the relevant principles:

> [I]n order to succeed, a claim that congressional commerce power legislation is invalid under the reasoning of *National League of Cities* must satisfy *each*

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[4]The court of appeals nevertheless proceeded to comment on those issues (Pet. App. 18a-20a), explaining that "even if the State of Alabama had chosen to operate Eastside as a state agency, the Center is not performing an 'integral' [governmental] function and thus the *Usery* exemption would not apply" (*id.* at 18a). The court explained that because the services provided by petitioner, unlike those considered in *National League of Cities* v. *Usery, supra*, relate to only a limited sector of society, state sovereignty would not be implicated in that hypothetical situation. Judge Hill concurred specially (Pet. App. 20a-21a), endorsing the court's judgment of reversal, but reserving decision on the hypothetical situation discussed by the other members of the panel and stressing that there was no need to decide that question.

> of three requirements. First, there must be a showing that the challenged statute regulates the "States as States." [426 U.S.] at 854. Second, the federal regulation must address matters that are indisputably "attribute[s] of state sovereignty" [426 U.S.] at 845. And third, it must be apparent that the State's compliance with the federal law would directly impair their ability "to structure integral operations in areas of traditional governmental functions." [426 U.S.] at 852. [Emphasis in original.]

In light of this teaching, the court of appeals correctly concluded that petitioner is not constitutionally immune from FLSA wage requirements because it is not an agency or political subdivision of a state. This decision does not conflict with any ruling of another court of appeals and does not warrant this Court's review.

1. The court of appeals correctly recognized that the threshold question presented in this case is whether petitioner should be characterized for purposes of the intergovernmental immunity doctrine as an agency of one of the "States [or] their political subdivisions" (*National League of Cities* v. *Usery, supra,* 426 U.S. at 855 & n.20). That much is clearly reflected in the Court's opinion in *National League of Cities* itself. *Id.* at 847, 852, 854, 855 & n.20. And it is the explicit holding of *Hodel* v. *Virginia Surface Mining & Reclamation Association, supra,* 452 U.S. at 287, that no claim of intergovernmental immunity may prevail without establishing "*each*" of the necessary elements, including that the statute challenged directly "regulates the 'States as States'" (quoting *National League of Cities* v. *Usery, supra,* 426 U.S. at 854). Thus, petitioner's assertion, echoing the district court (Pet. 11, quoting Pet. App. 27a; emphasis supplied by petitioner), that the relevant issue is "whether [it] provides a traditional government service,

not merely whether or not it is a political subdivision or public corporation" is squarely contrary to the holding of *Hodel*.[5]

Contrary to petitioner's suggestion, endorsed by the amici curiae, the court of appeals' refusal to extend intergovernmental immunity to nongovernmental entities generally was neither "formalistic" nor inappropriate. Like the inquiry into the historic locus of responsibility for functions affected by challenged federal legislation—which is also required by *National League of Cities* and *Hodel*—the determination whether the entity directly regulated shares in the state's sovereignty is necessary to determine "whether the federal regulation affects basic *State* prerogatives in such a way as would be likely to hamper the *[S]tate* government's ability to fulfill its role in the Union and endanger its 'separate and independent existence' " (*United Transportation Union* v. *Long Island R.R.*, No. 80-1925 (Mar. 24, 1982), slip op. 8, quoting *National League of Cities* v. *Usery, supra*, 426 U.S. at 851; emphasis added).

For purposes of discerning the scope of constitutional intergovernmental immunity, the State's election to establish petitioner as a nongovernmental entity was properly given controlling effect by the court of appeals. In choosing to pursue its objectives—however meritorious and important—through a nongovernmental entity, the State should

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[5]Petitioner incorrectly suggests (Pet. 12) that the actual analysis in *Hodel* indicates that the fact that the regulated entity is not a state or subdivision thereof is not in itself dispositive. The Court's opinion clearly reveals that the private identity of the mining operators directly regulated by the Surface Mining Act was sufficient to dispose of the challenge to that Act to the extent that it was predicated upon the effect of the Act upon surface mine operators. 452 U.S. at 288-289. The balance of the Court's discussion was directed to the separate contention (likewise found wanting) that the indirect effect of the federal statute upon state government itself constituted impermissible regulation of the State.

have known that that entity would be subject to federal legislation, including the FLSA. Cf. *United Transportation Union* v. *Long Island R.R., supra,* slip op. 8-12.[6] And no insult to state sovereignty can possibly arise where, as here, the decision to operate petitioner as a private nonprofit corporation was occasioned only by a technicality of state law or policy that is subject to alteration at the instance of the State.[7] See *Richland County Association, For Retarded Citizens* v. *Marshall,* 660 F.2d 388, 390-391 (9th Cir. 1981), vacated and remanded for lack of jurisdiction, 454 U.S. 389 (1982).

To be sure, as petitioner argues (Pet. 12), application of the FLSA to nongovernmental entities may influence the decisions of the states respecting the format and organization to be employed in delivering mental health services—

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[6]Petitioner (Pet. 4) and amicus curiae Alabama (Br. 8 n.8) incorrectly suggest that officials of the Department of Labor led them to believe that employees of community mental health centers such as respondent Williams were not, after *National League of Cities,* entitled to receive the federal minimum wage. The correspondence in question (Pet. App. 56e-57a) does not address whether employees of nonprofit nongovernmental centers are exempt from FLSA coverage; the correspondence is clearly directed only to "State and local government employees" (*id.* at 56a).

[7]There is some confusion as to why petitioner was not established as a public instrumentality when it became desirable to separate it from the Jefferson Authority. See page 2, *supra.* Petitioner asserts that state law would not allow its incorporation of a public corporation because of a statutory geographical quota system (Pet. 12). However, the private respondent claims that there was no such statutory impediment (Br. in Opp. 6 n.1), and the court of appeals merely assumed that such an impediment existed despite its uncertainty respecting its source (Pet. App. 6a). Amicus curiae Alabama now reports (Br. 8 & n.7) that the quota rule was merely an administrative policy—albeit of several years' standing. In any event, there is no suggestion whatever that the State of Alabama could not have removed any impediment that existed in state law to operation of the Eastside Center as a public instrumentality independent of the Jefferson Authority, or even that doing so would have compromised any state policy.

i.e., assignment of these responsibilities to the private sector may to some extent be discouraged. But the doctrine of intergovernmental immunity does not free the states from all consequences of their decisions; it merely shields against federal commerce power legislation their "freedom to structure integral operations in areas of traditional governmental functions." *National League of Cities* v. *Usery, supra,* 426 U.S. at 852. Neither the determination of wage rates for employees of a *nongovernmental* entity, nor the decision to allow mental health services to be provided by such an entity, implicates the freedom to structure *integral* government operations.[8] Accordingly, the doctrine of intergovernmental immunity has no application here.

The doctrine of intergovernmental immunity recognizes a narrow exception to the broad authority of Congress in legislating pursuant to the Commerce Clause. See *Hodel* v. *Virginia Surface Mining & Reclamation Association, Inc., supra,* 452 U.S. at 286-288. The Fair Labor Standards Act, like every other Act of Congress, comes before the courts cloaked with a strong presumption of constitutionality—except to the extent that this Court's decision in *National League of Cities* indicates that its application is impermissible in defined circumstances. But where, as here, the criteria for immunity recognized by this Court are not met, the considerations of federalism that underlie *National League of Cities* are not implicated. Nothing in *National League of*

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[8]Amici curiae Louisiana, et al. argue (Br. 7-9) that the court of appeals' decision will impair the states' sovereignty by impeding the "deinstitutionalization" movement—the trend away from provision of mental health services through large state hospitals and toward delivery of such services in smaller community settings. But there is no evidence in the record, and amici have pointed to none, that such community treatment centers cannot be operated by public instrumentalities. Nor is there evidence that application of the FLSA to nongovernmental mental health facilities would significantly affect the feasibility of "deinstitutionalization" through private sector facilities.

Cities suggests that a state may extend its own immunity to nongovernmental entities. See *Powell* v. *United States Cartridge Co.*, 339 U.S. 497 (1950) (FLSA applies to employees of government contractor operating under a cost-plus-a-fixed-fee contract with the United States, notwithstanding the statutory exemption for the federal government in the Act);[9] see also *United States* v. *New Mexico*, No. 80-702 (Mar. 24, 1982) (federal government's constitutional immunity from state taxation unavailable to federal contractors); *Washington* v. *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 150-162 (1980) (Indian tribal exemption from state taxation not available to non-Indian purchasers of commodities produced outside the reservation and imported to be sold to off-reservation purchasers).[10] Where a state elects to allow services to be delivered by a nongovernmental entity, withholding from it the economic advantage that would result from that entity's use of private employees on terms more favorable than those prevailing generally in the private sector cannot be said to infringe the state's sovereignty.

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[9]From the time of its enactment more than 40 years ago, the Fair Labor Standards Act has been applied to private employers under contract with a state, and the courts have consistently rejected the claim that such employers are within the former statutory exemption for "any State or political subdivision of a State" (29 U.S.C. (1964 ed.) 203(d)). See, *e.g.*, *Public Building Authority* v. *Goldberg*, 298 F.2d 367, 369 (5th Cir. 1962); *Walling* v. *McCrady Construction Co.*, 60 F. Supp. 243, 245 (W.D. Pa. 1945), aff'd, 156 F.2d 932, 934 (3d Cir.), cert. denied, 329 U.S. 785 (1946); *Mitchell* v. *Singstad*, 177 F. Supp. 376, 382 (D. Md. 1959); *Walling* v. *New Orleans Private Patrol Service, Inc.*, 57 F. Supp. 143, 148 (E.D. La. 1944); *Walling* v. *Craig*, 53 F. Supp. 479, 483-484 (D. Minn. 1943).

[10]Cf. *Blum* v. *Yaretsky*, No. 80-1952 (June 25, 1982), slip op. 12-18 (transfer of patients by nursing homes regulated and subsidized by state not state action for purposes of Fourteenth Amendment); *Rendell-Baker* v. *Kohn*, No. 80-2102 (June 25, 1982), slip op. 9-13 (discharge of teacher by private school providing education for maladjusted high school students referred by public bodies pursuant to contracts is not action under color of state law for purposes of 42 U.S.C. 1983).

2. Petitioner's quarrel is, to some extent, with the court of appeals' application of the rule limiting intergovernmental immunity from federal commerce power legislation to the particular facts of this case (Pet. 13-17). In short, petitioner believes that the court of appeals has mischaracterized its relationship with the State of Alabama. But this aspect of the court of appeals' decision is essentially fact-bound and presents no question of general importance warranting this Court's review.[11] In any event, the decision of the court of appeals is correct for the reasons sufficiently stated by the court, upon which we rely (see pages 4-5, *supra*; Pet. App. 15a-17a).[12]

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[11]The court of appeals frankly acknowledged "the borderline nature of the facts before" it (Pet. App. 15a) and stressed the fact-bound nature of its ruling (*ibid.*).

[12]Petitioner's contention (Pet. 12-17) that the court of appeals erred by referring to the principles noted in *NLRB* v. *Natural Gas Utility District*, 402 U.S. 600 (1971), is insubstantial. In that case, the Court considered whether an entity constituted a "political subdivision" excluded from the definition of "employer" in the National Labor Relations Act, 29 U.S.C. 152(2). The court of appeals recognized that *NLRB* v. *Natural Gas Utility District* presented only an issue of statutory interpretation, but properly observed that the Court's consideration of the meaning of the term "political subdivision" provided, at the very least, a helpful analogy here (Pet. App. 13a). The analogy is indeed apt because the considerations of federalism that underlie the public employee exception to the NLRA are similar to those that inform this Court's decision in *National League of Cities*. See *NLRB* v. *Natural Gas Utility District*, *supra*, 402 U.S. at 604.

In any event, the court of appeals' conclusion that petitioner is not a political subdivision for intergovernmental immunity purposes is in no sense dependent upon the analogy to the NLRA (see Pet. App. 15a-17a). Nor, contrary to petitioner's suggestion (Pet. 15), did the court of appeals misapply the test borrowed from *NLRB* v. *Natural Gas Utility District*. The first branch of that test stipulates that an entity "created directly by the state *so as to constitute [a] department[] or administrative arm[] of the government*" is a political subdivision. 402 U.S. at 604 (emphasis added). Petitioner simply ignores the italicized language. See Pet. 15. And contrary to petitioner's alternative assertion (Pet. 15-16),

3. Petitioner (Pet. 17-21) and the amici curiae (Alabama Br. 13-19; Louisiana Br. 9-11) seek review, as well, of the suggestion by two members of the panel (see page 6, note 4, *supra*) that, even if petitioner were part of state government, intergovernmental immunity would not shield it from application of the FLSA. There is plainly no occasion to consider that hypothetical question in this case. Cf. *California* v. *Sierra Club*, 451 U.S. 287, 298 (1981). The court of appeals frankly labelled the portion of its opinion touching on that issue as dictum (Pet. App. 18a), and the concurring judge joined in that characterization (*id.* at 20a-21a). This aspect of the court's discussion accordingly is unnecessary to the proper resolution of this lawsuit. As the court below recognized (Pet. App. 18a), there is no reason to decide in this case whether provision of mental health services through halfway houses is a traditional function of state government, or whether application of the FLSA to govern terms of employment in such a facility operated by a state agency would displace fundamental state decisions in a manner irreconcilable with state sovereignty. We note, in addition, that the conflict alleged to exist between the decision of the court below and decisions of other courts of appeals (Pet. 19-21) pertains only to the court of appeals' dictum, and not to the primary basis for the court's ruling.[13]

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the court of appeals did not rely on any single factor in determining that petitioner is not de facto controlled by the State of Alabama or the Jackson Authority—and thus that the second alternative criterion for identifying a political subdivision reflected in *NLRB* v. *Natural Gas Utility District* was not satisfied. See Pet. App. 15a-17a.

[13]The existence of a conflict requiring immediate resolution is in any event doubtful. The soundness of the standard employed by the Sixth Circuit in *Amersbach* v. *City of Cleveland*, 598 F.2d 1033 (1979), upon which petitioner relies, is an open question in light of the intervening decision in *United Transportation Union* v. *Long Island R.R.*, *supra*, which establishes at a minimum that, contrary to the view of the Sixth Circuit (598 F.2d at 1037), the historic locus of a function as public or private is a vital consideration in the intergovernmental immunity

4. Petitioner's final contention (Pet. 23-26) is that the decision of the court of appeals will have a substantial adverse impact upon state mental health systems. Because the decision below dealt only with a state plan to contract out mental health treatment to private entities, that assertion is incorrect. In any event, this Court affirmed in *Hodel* v. *Virginia Surface Mining & Reclamation Association, supra,* that, under *National League of Cities,* "the ultimate

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analysis. *Molina-Estrada* v. *Puerto Rico Highway Authority,* 680 F.2d 841 (1st Cir. 1982), also cited by petitioner, was actually decided on statutory grounds. *Id.* at 846. To be sure, the First Circuit did borrow its analysis from Tenth Amendment cases, particularly the Sixth Circuit's decision in *Amersbach* v. *City of Cleveland, supra,* but the court engaged in no independent analysis of the scope of intergovernmental immunity. Instead, the court explained that "[t]he parties here are apparently willing for us to apply" the *Amersbach* criteria. *Molina-Estrada* v. *Puerto Rico Highway Authority, supra,* 680 F.2d at 845. Finally, even if the alleged conflict (see Pet. 21) between the Fifth Circuit's decision in *NLRB* v. *Highview, Inc.,* 590 F.2d 174, 178 (1979), and the decision below were not purely semantic, review by this Court would not be warranted because the conflict is effectively intra-circuit in nature.

The issue actually decided by the court of appeals has been considered by only one other court of appeals to date, and, as this Court subsequently held, that court had no jurisdiction to do so. As petitioner observes (Pet. 25 n.12), a divided panel of the Ninth Circuit held that intergovernmental immunity from application of the FLSA extends to a private non-profit organization under contract with a state to provide residential care for the mentally retarded. *Richland County Association for Retarded Citizens* v. *Donovan,* 91 Lab. Cas. (CCH) para. 34,018 (1981). Subsequent to the government's filing of a jurisdictional statement in this Court, the Ninth Circuit sua sponte withdrew that opinion and issued a new opinion, 660 F.2d 388 (1981), reaching the opposite conclusion in light of *Hodel* v. *Virginia Surface Mining & Reclamation Association, supra.* This Court vacated the judgment of the court of appeals and both opinions without reaching the merits, because the court of appeals lacked jurisdiction to entertain an appeal from the judgment of the district court holding the FLSA unconstitutional as applied. *Donovan* v. *Richland County Association for Retarded Citizens,* 454 U.S. 389 (1982).

economic impact" of the federal action on a state is not determinative. "[E]ven if it is true that the Act's requirements will have a measurable impact on [the state], this kind of effect, standing alone, is insufficient to establish a violation of the Tenth Amendment." 452 U.S. at 292 n.33.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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